

8.1	Requirements to Release or Place a Child Pending Trial	214
	A. Requirements to Release a Child to a Parent, Guardian, or Legal Custodian	214
	B. Requirements to Place a Child Outside His or Her Home	214
8.2	Type of Placements Available	216
	Practice Note: Kinship Care, by Ron Apol	
8.3	Required Release of Information When a Child Is Placed in Foster Care	220
8.4	Required Medical Examination of a Child Placed in Foster Care ..	221
8.5	Requirements for Establishing “Medical Passports”	223
8.6	Required Advice Concerning Initial Service Plans	223
8.7	Parenting Time or Visitation	225
8.8	Order for Examination or Evaluation of Parent, Guardian, Legal Custodian, or Child	227
8.9	Required Findings When Placement Is Ordered	227
8.10	Required “Reasonable Efforts” Finding.....	228
8.11	Review of Placement and Initial Service Plan	231
	A. On Motion of a Party.....	231
	B. Following Notification of Supervising Agency’s Placement Decision.....	232
8.12	Restrictions on Changes of a Child’s Foster Care Placement	233
8.13	Required Notices Prior to Changes of a Child’s Foster Care Placement	234
8.14	Required Procedures for Appeals of Changes of Foster Care Placements	235
	A. Investigation by Foster Care Review Board	235
	B. Change in Child’s Placement Pending Appeal to Family Division	235
8.15	Appeals to Family Division or MCI Superintendent of Changes of Foster Care Placements	235
8.16	Emergency Change in a Child’s Foster Care Placement	236
	Practice Note: Foster Care Review Board	
8.17	Placement of a Child Pursuant to the Safe Delivery of Newborns Law	239

In this chapter. . .

As described in Chapter 3, a court may order that a child be taken into temporary protective custody pending a preliminary hearing. Chapter 7 discusses requirements for preliminary hearings. If the court authorizes the filing of a petition at a preliminary hearing, the court must also decide whether to order the child returned to his or her parent or parents, guardian, or legal custodian, or to place the child outside of his or her home. The requirements for placing a child outside of his or her home and for reviewing this initial placement decision are discussed in this chapter. This chapter also discusses the release of information concerning a child to the child’s care provider. In addition, Section 8.17 contains a discussion of the requirements to place a child and terminate parental rights under the Safe Delivery of Newborns Law.

As an alternative to placing a child outside of his or her home, a court may order an alleged abuser out of the child's home. See Sections 7.13–7.15. For the requirements to place an Indian child outside of his or her home, see Chapter 20.

8.1 Requirements to Release or Place a Child Pending Trial

A. Requirements to Release a Child to a Parent, Guardian, or Legal Custodian

MCL 712A.13a(3) provides the court with authority to release a child to his or her parent or parents, guardian, or legal custodian even though a petition has been authorized. That statute states:

“Except as provided in subsection (5), if a petition under subsection (2) is authorized, the court may release the juvenile in the custody of either of the juvenile's parents or the juvenile's guardian or custodian under reasonable terms and conditions necessary for either the juvenile's physical health or mental well-being.”

The applicable court rule, MCR 3.965(B)(12)(a), states that, following petition authorization, a court “may release the child to a parent, guardian, or legal custodian and may order such reasonable terms and conditions believed necessary to protect the physical health or mental well-being of the child.”

“No one has the right to post bail in a protective proceeding for the release of a child in the custody of the court.” MCR 3.965(C)(5).

Required findings when abuse is alleged. If a petition alleges that a parent, guardian, custodian, nonparent adult, or other person residing in a child's home has abused the child, the court may not leave the child in or return the child to the home unless it “finds that the conditions of custody . . . are adequate to safeguard the child from the risk of harm to the child's life, physical health, or mental well-being.” MCL 712A.13a(5).*

*See Section 7.13 for a more detailed discussion.

B. Requirements to Place a Child Outside His or Her Home

If the petition is authorized for filing, the court may order placement of the child outside of his or her home. MCR 3.965(C)(1) states as follows:

“(1) *Placement; Proofs.* If the child was not released under subrule (B), the court shall receive evidence, unless waived, to establish that the criteria for placement set forth in subrule 3.965(C)(2) are present. The

respondent shall be given an opportunity to cross-examine witnesses, to subpoena witnesses, and to offer proofs to counter the admitted evidence.”

MCR 3.965(C)(2) states:

“(2) *Criteria.* If continuing the child’s residence in the home is contrary to the welfare of the child, the court shall not return the child to the home, but shall order the child placed in the most family-like setting available consistent with the child’s needs.”

“‘Contrary to the welfare of the child’ includes, but is not limited to, situations in which the child’s life, physical health, or mental well-being is unreasonably placed at risk.” MCR 3.903(C)(3).

The court’s findings may be on the basis of hearsay evidence that possesses adequate indicia of trustworthiness. MCR 3.965(C)(3).

Establishing a child’s eligibility for federal foster care maintenance payments. To establish eligibility for federal funding of a child’s foster care placement, a court must make a finding in its first order that sanctions a child’s removal from his or her home that “continuation in the home is contrary to the welfare of the child.” 45 CFR 1356.21(c). This finding must be detailed and be included in the court order or hearing transcript. Affidavits, nunc pro tunc orders, or orders simply referencing a Michigan statute or court rule are insufficient. 45 CFR 1356.21(d).*

*See Sections 3.2 and 14.1 for further discussion of these requirements.

Limitations on placements when abuse is alleged. MCL 712A.13a(5) prohibits placing a child in unlicensed foster care (i.e., with a relative) when abuse is alleged “unless the court finds that the conditions of custody . . . are adequate to safeguard the child from the risk of harm to the child’s life, physical health, or mental well-being.”*

*See Section 7.13.

Transfer of case from Children’s Protective Services (CPS) to Foster Care Services. If the child has been removed from his or her home or placed in foster care, responsibility for case service and management is transferred from CPS to Foster Care Services. The CPS case is kept open through the adjudicative phase of court proceedings, however, as a CPS worker may be required to testify at trial. Foster care services or agency workers complete the Initial Services Plan and arrange parenting time and, if necessary, sibling visits. If the agency becomes aware of additional abuse or neglect by a parent, guardian, custodian, nonparent adult, foster parent, or other person while the child is under the court’s jurisdiction, and if the abuse or neglect is substantiated, the agency must file a supplemental petition. See MCL 712A.19(1) and DHS *Services Manual*, CFF 722-13 and CFP 716-9.

8.2 Type of Placements Available

Most family-like setting. If not released, the child must be placed in the most family-like setting consistent with the needs of the child. MCL 712A.13a(10) and MCR 3.965(C)(2). MCL 712A.1(3) states in part that “[i]f a juvenile is removed from the control of his or her parents, the juvenile shall be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents.”

If an Indian child is involved in the proceedings, 25 USC 1915(b) applies. That statute, which is similar to Michigan law cited above, states in part:

“Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child.”

“Placement” defined. “‘Placement’ means court-approved transfer of physical custody of a child to foster care, a shelter home, a hospital, or a private treatment agency.” MCR 3.903(C)(8). “‘Foster care’ means 24-hour a day substitute care for children placed away from their parents, guardians, or legal custodians, and for whom the court has given the Family Independence Agency placement and care responsibility, including, but not limited to,

(a) care provided to a child in a foster family home, foster family group home, or child caring institution licensed or approved under MCL 722.111 *et seq.*, or

(b) care provided to a child in a relative’s home pursuant to an order of the court.” MCR 3.903(C)(4).*

MCL 712A.13a(1)(e) contains a substantially similar definition of “foster care.”

Placement often occurs through an “agency,” either a local DHS office or a private agency under contract with DHS. “Agency” means “a public or private organization, institution, or facility that is performing the functions under part D of title IV of the social security act, 42 USC 651 to 655, 656 to 657, 658a to 660, and 663 to 669b, or that is responsible under court order or contractual arrangement for a juvenile’s care and supervision.” MCL 712A.13a(1)(a).

MCL 712A.14(3) and MCL 712A.16(2) allow a court or agency to place a child in the following homes or facilities:

*Federal Title IV-E funding is unavailable if the child’s foster home is unlicensed. See Section 14.1.

- the home of the child’s parent or parents, guardian, or legal custodian;
- in a licensed county child care home or facility;
- with a licensed child caring institution; or
- with a licensed child placing agency.

A **“child caring institution”** is defined in MCL 722.111(1)(b) and includes:

“ . . . a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the child caring institution for that purpose, and operates throughout the year. . . . Child caring institution also includes institutions for mentally retarded or emotionally disturbed minor children.”

A **“child placing agency”** is defined in MCL 722.111(1)(c) and includes:

“ . . . a governmental organization or an agency organized . . . for the purpose of receiving children for placement in private family homes for foster care or for adoption. The function of a child placing agency may include investigating applicants for adoption and investigating and certifying foster family homes and foster family group homes as provided in this act. The function of a child placing agency may also include supervising children who are 16 or 17 years of age and who are living in unlicensed residences as provided in [MCL 722.115(4)].”

Relative placements. Upon the child’s removal from parental custody, as part of the Initial Service Plan, the child’s supervising agency must, within 30 days, identify, locate, and consult with relatives to determine placement with a fit and appropriate relative who would meet the child’s developmental, emotional, and physical needs. Such a “relative placement” would be an alternative to nonrelative foster care. MCL 722.954a(2). “‘Related’ means a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, cousin, great aunt, great uncle, or stepgrandparent related by marriage, blood, or adoption.” MCL 722.111(1)(o).

Effective December 28, 2004, 2004 PA 475 amended MCL 712A.13a to add a definition of “relative” and to allow a court to place a child with a putative father’s parent in some circumstances. The definition of “relative” contained in new MCL 712A.13a(1)(j) is broader than that contained in

MCL 722.111(1)(o) quoted in the paragraph above. MCL 712A.13a(1)(j) states:

“‘Relative’ means an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. A placement with the parent of a putative father under this subdivision is not to be construed as a finding of paternity or to confer legal standing on the putative father.”

*See Sections 2.16(F) and 2.18 (LEIN and central registry checks).

If a child is to be placed in a relative’s home, the DHS must perform a central registry clearance and criminal record check on every resident of the home.* The DHS must also perform a home study. MCL 712A.13a(9) states:

“Before or within 7 days after a child is placed in a relative’s home, the family independence agency shall perform a criminal record check and central registry clearance. If the child is placed in the home of a relative, the court shall order a home study to be performed and a copy of the home study to be submitted to the court not more than 30 days after the placement.”

The applicable court rule, MCR 3.965(C)(4), allows a court to order DHS to report the results of the central registry clearance and criminal record check and requires a court to order a home study. That rule states:

“(4) *Record Checks; Home Study.* If the child has been placed in a relative’s home,

(a) the court may order the Family Independence Agency to report the results of a criminal record check and central registry clearance of the residents of the home to the court before, or within 7 days after, the placement, and

(b) the court must order the Family Independence Agency to perform a home study with a copy to be submitted to the court not more than 30 days after the placement.”

Practice Note: Kinship Care, by Ron Apol

Kinship programs involve the extended kinship network in providing care and protection for children in need of placement due to parental child abuse or neglect. The programs utilize family group conferences to divert children from the formal foster care system, thus providing culturally competent family and community network intervention. Kinship care may be used for family support, temporary care, emergency placement, or long-term care.

Kinship programs employ a team approach between children's protective service workers and the Kinship staff. The team identifies concerned members of the child's kinship network, convenes a family group meeting, develops a plan for the child's safety, and provides supports to kinship or community caregivers and parents. The process ensures that children in need of permanent families will receive timely support, assessment, and casework services with minimal court involvement. This innovative approach to permanency planning recognizes the important connections of the child, the family, and the community.

Michigan's Department of Human Services formally recognized the benefits of kinship care in April of 1997 when it incorporated aspects of kinship care policies and principles into the service policies of its Division of Children's Protective Services. The new policy states that, provided the placement will meet the health and safety needs of the child, the preferred placement for children is within the kinship family network. This network includes kin, who are defined as blood relatives or relatives by marriage, and "fictive" kin, who are defined as non-blood or marriage-related adults who have a psychological/emotional bond with the child and are identified as "family". CPS workers are also required to identify and use kinship care relationships during an investigation and they must explore kinship care options with family and/or the foster care worker. While children may be placed with kin without legal guardianship, "fictive" kin must have legal guardianship for a non-relative child to be placed in their home. If necessary, CPS workers are to work with "fictive" kin to secure legal guardianship. The state has such strong confidence in the effectiveness of kinship care that if a child is not placed within the kinship network, CPS workers are required to document the steps taken to place the child in kinship care and the reasons why the child was not placed in such care. Kinship care families may be eligible for various services (food stamps, cash assistance, etc.) in order to prevent placement in non-kinship foster care. If services are needed, CPS workers should assist the family in securing access to them. By incorporating the principles of Kinship programs, the Department of Human Services seeks to further its mission of strengthening families by empowering them to help each other.

There are various Kinship programs throughout the state. Funding provided by The Kellogg Foundation has been used to adapt the family group conference model, which originated in New Zealand, to Michigan. In Grand Rapids, the family conference model was utilized to develop "The Family and Community Compact" through a community permanency planning initiative. The Grand Rapids Foundation administers this particular kinship program.

Placing siblings together. DHS *Services Manual*, CFF 722-3 states as follows:

“Placement with siblings - Efforts to place sibling groups in the same out-of-home placement must be given priority except in cases where such placement would not be considered in the child(ren)’s best interests. If this proves impossible or is not in the children’s best interest, the reasons for such are to be recorded in the ISP and/or subsequent USPs, as appropriate. Written second line supervisory approval is required for a placement which separates or maintains separation of siblings. (See CFF 722-2, Placement with Siblings.)

“When separated, the relationship between siblings must be maintained. A detailed plan of visits, phone calls, and letters must be recorded in the Parent-Agency Treatment Plan and Service Agreement (See CFF 722-8 C and RFF 67) or the Permanent Ward Treatment Plan and Service Agreement (CFF 722-9D and RFF 68), as appropriate. If a child(ren) has been placed for adoption and his/her siblings remain in care, the adoptive parents should be encouraged to continue contact with the child’s siblings. See CFF 722-6, Sibling Visitation.”

MCL 722.118b(1) and MCL 722.137a allow the DHS, upon recommendation of a local Foster Care Review Board or a child placing agency, to grant a variance to licensing rules or statutes to allow a child and one or more siblings to be placed together.

Children absent without leave from placement. DHS *Services Manual*, CFF 722-3, contains procedures that foster care staff and others must follow when a child is absent without leave from placement. These procedures include notification of law enforcement agencies, the supervising agency, and the court. Courts are required to institute expedited procedures to review such cases and take appropriate action. See Admin Order No. 2002-04, 467 Mich cv (2002).

8.3 Required Release of Information When a Child Is Placed in Foster Care

If the child is placed in foster care,* the court must order that, within 10 days after receiving a written request, the agency must provide the person who is providing the foster care with copies of all initial, updated, and revised Case Service Plans and court orders relating to the child, and all of the child’s medical, mental health, and education reports, including reports compiled before the child was placed. MCL 712A.13a(13) and MCL 712A.18f(5).

Moreover, the court must include in its placement order:

*See Section 8.2, above, for a definition of “foster care.”

- an order that the child’s parent, guardian, or custodian provide the supervising agency with the name and address of each of the child’s medical providers, and
- an order that each of the child’s medical providers release the child’s medical records. The order may specify providers by profession or type of institution.

MCL 712A.13a(14)(a)–(b). MCR 3.965(C)(7) states:

“(7) *Medical Information.* Unless the court has previously ordered the release of medical information, the order placing the child in foster care must include:

(a) an order that the child’s parent, guardian, or legal custodian provide the supervising agency with the name and address of each of the child’s medical providers, and

(b) an order that each of the child’s medical providers release the child’s medical records.”

8.4 Required Medical Examination of a Child Placed in Foster Care

The child’s supervising agency must ensure that the child receives a medical examination within 30 days of placement. One objective of this initial examination is to provide a record of the child’s medical and physical status upon entry into foster care. MCL 722.954c(5).

If a child under the care of a supervising agency has suffered sexual abuse, serious physical abuse, or mental illness, the supervising agency must have an experienced and licensed mental health professional as defined in MCL 330.1100b(14)(a) or (b), or a social worker certified under MCL 339.1606,* who is trained in children’s psychological assessments perform an assessment or psychological evaluation of the child. MCL 722.954c(4).

The agency supervising the child’s care must obtain from the parent, guardian, or custodian the name and address of the child’s medical provider and a signed document for the release of the child’s medical records. The child’s medical provider must remain constant while the child is in foster care, unless the child’s current primary medical provider is a managed care health plan, or unless requiring the medical provider to remain constant would create an unreasonable burden for the relative, foster parent, or other custodian of the child. MCL 722.954c(1).*

*See MCL 333.18511.

*See Section 8.3, above, for required orders by the court concerning the child’s medical information.

*A court has authority to order medical treatment for a child who is under its jurisdiction. See Section 13.9(G).

Authority to consent to medical treatment. A provision of the Child Care Organizations Act, MCL 722.124a, limits the authority* of persons other than parents to consent to non-emergency medical treatment. That statute states in relevant part:

“(1) A probate court, a child placing agency, or the department may consent to routine, nonsurgical medical care, or emergency medical and surgical treatment of a minor child placed in out-of-home care pursuant to . . . [MCL] 400.1 to 400.121 . . . , [MCL] 710.21 to 712A.28 . . . , or this act. If the minor child is placed in a child care organization, then the probate court, the child placing agency, or the department making the placement shall execute a written instrument investing that organization with authority to consent to emergency medical and surgical treatment of the child. The department may also execute a written instrument investing a child care organization with authority to consent to routine, nonsurgical medical care of the child. If the minor child is placed in a child care institution, the probate court, the child placing agency, or the department making the placement shall in addition execute a written instrument investing that institution with authority to consent to the routine, nonsurgical medical care of the child.

“(2) A parent or guardian of a minor child who voluntarily places the child in a child care organization shall execute a written instrument investing that organization with authority to consent to emergency medical and surgical treatment of the child. The parent or guardian shall consent to routine, nonsurgical medical care.

“(3) Only the minor child’s parent or legal guardian shall consent to nonemergency, elective surgery for a child in foster care. If parental rights have been permanently terminated by court action, consent for nonemergency, elective surgery shall be given by the probate court or the agency having jurisdiction over the child.

“(4) As used in this section, ‘routine, nonsurgical medical care’ does not include contraceptive treatment, services, medication or devices.”

MCL 722.124a applies when a child is “placed in out-of-home care.”

8.5 Requirements for Establishing “Medical Passports”

A “medical passport” must be developed by the supervising agency for each child coming within its care. A “medical passport” must contain:

- all medical information required by policy or law to be provided to foster parents;
- basic medical history;
- a record of all immunizations; and
- any other information concerning the child’s physical and mental health.

MCL 722.954c(2)(a)–(d). A foster care worker who transfers a medical passport must sign and date it, verifying that the worker has sought and obtained the required information and any additional information required by DHS policy. MCL 722.954c(3).

8.6 Required Advice Concerning Initial Service Plans

MCR 3.965(E) states as follows:

“(E) *Advice; Initial Service Plan.* If placement is ordered, the court must, orally or in writing, inform the parties:

“(1) that the agency designated to care and supervise the child will prepare an initial service plan no later than 30 days after the placement;

“(2) that participation in the initial service plan is voluntary unless otherwise ordered by the court;

“(3) that the general elements of an initial service plan include:

- (a) the background of the child and the family,
- (b) an evaluation of the experiences and problems of the child,
- (c) a projection of the expected length of stay in foster care, and
- (d) an identification of specific goals and projected time frames for meeting the goals; and

“(4) that, on motion of a party, the court will review the initial service plan and may modify the plan if it is in the best interests of the child.

*See Sections 8.2 and 8.11(B) for discussions of MCL 722.954a(2). For a discussion of MCL 712A.18f(6), see Section 13.6.

“The court shall direct the agency to identify, locate, and consult with relatives to determine if placement with a relative would be in the child’s best interests, as required by MCL 722.954a(2). In a case to which MCL 712A.18f(6) applies, the court shall require the agency to provide the name and address of the child’s attending physician of record or primary care physician.”*

See also MCL 712A.13a(8)(a)–(c), which contain similar requirements, and *DHS Services Manual*, CFF 722–8–8c.

Federal law requirements. The development of a case plan for a child is governed by a federal regulation implementing the Adoption & Safe Families Act. 45 CFR 1356.21(g) states as follows:

“(g) *Case plan requirements.* In order to satisfy the case plan requirements of [42 USC 671(a)(16), 675(1), and 675(5)(A) and (D)], the State agency must promulgate policy materials and instructions for use by State and local staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child must:

- (1) Be a written document, which is a discrete part of the case record, in a format determined by the State, which is developed jointly with the parent(s) or guardian of the child in foster care; and
- (2) Be developed within a reasonable period, to be established by the State, but in no event later than 60 days from the child’s removal from the home pursuant to paragraph (k) of this section;*
- (3) Include a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent with the best interests and special needs of the child. ([Federal financial participation] is not available when a court orders a placement with a specific foster care provider);
- (4) Include a description of the services offered and provided to prevent removal of the child from the home and to reunify the family; and

*The 60-day period is calculated from the child’s actual or constructive removal from his or her home.

(5) Document the steps to finalize a placement when the case plan goal is or becomes adoption or placement in another permanent home in accordance with [42 USC 675(1)(E) and (5)(E)]. When the case plan goal is adoption, at a minimum, such documentation shall include child-specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems.”

8.7 Parenting Time or Visitation

MCR 3.965(C)(6) states as follows:

“(6) Parenting Time or Visitation.

“(a) Unless the court suspends parenting time pursuant to MCL 712A.19b(4), or unless the child has a guardian or legal custodian, the court must permit each parent frequent parenting time with a child in placement unless parenting time, even if supervised, may be harmful to the child.

“(b) If the child was living with a guardian or legal custodian, the court must determine what, if any, visitation will be permitted with the guardian or legal custodian.”

The frequency of parenting time or visitation prior to trial is not specified in court rule or statute. See, however, MCL 712A.18f(3)(e), which specifies that parenting time must occur at least every seven days during the dispositional stage of proceedings. *DHS Services Manual*, CFF 722-6, provides the following guidelines regarding parenting time:

“Foster care staff are to utilize the following guidelines in developing a parenting time plan with the parent(s):

“1. A child and parent shall be offered parenting time within the first week of placement and at least weekly thereafter. If the child is very young, parenting time should be more frequent.

“2. The standard scheduling for parenting time, when the plan is to return the child home, is to increase the length of parenting time and to allow unsupervised parenting time in the parental home.

“3. At the time a child is placed in a foster care setting, the supervising agency worker must discuss with the parents:

- a. the critical importance of parenting time with the child,
- b. the likely positive and negative consequences of parenting time, and
- c. that parenting time is a good indicator of an early reunification of the family unit.

“4. The separation of a child(ren) from a parent(s) is traumatic. A child may regress behaviorally or act out in anger against the parent(s) and others. Parent(s) may view this as a betrayal by the child(ren) and may also express anger towards the “system”. Workers should assist the parent(s) and child(ren) in understanding their grief as a common reaction to the stress of removal.

“5. Workers should assist foster parents/kinship caregivers in understanding the child’s reaction to parenting time. It will help them to understand that many times the child’s aggressive behavior is not directed at them but is a reflection of the loss that the child is feeling.

“6. Caseworkers and parent(s) must work together to identify the needs of the child(ren) that should be met during parenting time which will display the changes in parenting necessary for reunification. These changes must be behaviorally specific, developmentally appropriate and documented in the Parent-Agency Treatment Plan and Services Agreement (RFF 67).

“7. When the Court orders parenting time to be supervised, case aides, foster parents and others may supervise visits; although workers must be sufficiently present to be able to monitor and assess in home parenting time between a parent(s) and his/her children. The worker must be able to testify in court regarding the interaction between the parent(s) and children. Parenting time supervisors are to be aware of the expectations of the parent(s) during parenting time and are to facilitate and encourage appropriate behaviors during parenting time.”

The supervising agency must institute a flexible schedule to allow for the occurrence of supervised in-home visitation outside of the traditional

workday to accommodate the schedules of the persons involved. MCL 722.954b(3).

Denial of parenting time. MCL 712A.13a(11) provides that if parenting time, even if supervised, may be harmful to the child, the court must order a psychological evaluation of the child, counseling for the child, or both to determine the appropriateness and conditions of parenting time. The court may suspend parenting time while the psychological evaluation or counseling is being conducted. *Id.*

If a petition requesting termination of parental rights has been filed, parenting time for a parent who is the subject of the petition is automatically suspended and, except as described below, remains suspended at least until a decision is issued on the termination petition. If a parent whose parenting time has been suspended establishes, and the court determines, that parenting time will not harm the child, the court may order parenting time in the amount and under the conditions the court determines appropriate. MCL 712A.19b(4).*

*See Chapter 18.

8.8 Order for Examination or Evaluation of Parent, Guardian, Legal Custodian, or Child

“The court may order that a minor or a parent, guardian, or legal custodian be examined or evaluated by a physician, dentist, psychologist, or psychiatrist.” MCR 3.923(B). MCL 712A.12 states in part that “[a]fter a petition [has] been filed and after such further investigation as the court may direct, . . . the court may order the child to be examined by a physician, dentist, psychologist or psychiatrist”

The privilege against self-incrimination in the Fifth Amendment to the United States Constitution may not be raised by a parent to prevent him or her from undergoing a psychological examination in child protective proceedings to determine if parental rights should be terminated. *In re Johnson*, 142 Mich App 764, 765–66 (1985).

8.9 Required Findings When Placement Is Ordered

MCR 3.965(C)(3) sets forth the required findings when the court orders placement. That rule states:

“(3) *Findings.* If placement is ordered, the court must make a statement of findings, in writing or on the record, explicitly including the finding that it is contrary to the welfare of the child to remain at home. If the ‘contrary to the welfare of the child’ finding is placed on the record and not in a written statement of findings, it must be capable of being transcribed.* The findings may be on

*See Sections 8.1(B), above, and 3.2.

the basis of hearsay evidence that possesses adequate indicia of trustworthiness.”

8.10 Required “Reasonable Efforts” Finding

Requirements to establish a child’s eligibility for federal foster care maintenance payments. To establish a child’s eligibility for federal foster care maintenance payments under Title IV-E of the Social Security Act, a court is required to make a finding that “reasonable efforts” have been made to avoid non-emergency removal of a child from his or her home and placement of the child in foster care. 42 USC 672(a)(1). The relevant federal regulation, 45 CFR 1356.21(b), states in part as follows:

“(b) *Reasonable efforts.* The State must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child’s safety is assured In order to satisfy the ‘reasonable efforts’ requirements of [42 USC 671(a)(15)] (as implemented through [42 USC 672(a)(1)]), the State must meet the requirements of paragraphs (b) and (d) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child’s health and safety must be the State’s paramount concern.

“(1) *Judicial determination of reasonable efforts to prevent a child’s removal from the home.*

(i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

* * *

“(3) *Circumstances in which reasonable efforts are not required to prevent a child’s removal from home* Reasonable efforts to prevent a child’s removal from home . . . are not required if the State agency obtains a judicial determination that such efforts are not required because:*

(i) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) A court of competent jurisdiction has determined that the parent has been convicted of:

(A) Murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(B) Voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or

(D) A felony assault that results in serious bodily injury to the child or another child of the parent; or,

(iii) The parental rights of the parent with respect to a sibling have been terminated involuntarily.”

The 60-day period for making a “reasonable efforts” determination begins on the date the child was actually removed from his or her home. If the child was living with a relative prior to the court proceedings and the court places the child with that relative, the date of the court order for removal from the constructive custody of a parent is the date of actual removal. 45 CFR 1356.21(k)(1)(ii).

Documentation of “reasonable efforts” finding. As with other findings required to establish or maintain a child’s eligibility for federal foster care funding, a federal regulation requires documentation of this “reasonable efforts” finding. 45 CFR 1356.21(d) states:

“(d) *Documentation of judicial determinations.* The judicial determination[] regarding . . . reasonable efforts to prevent removal . . . including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

(1) If the reasonable efforts . . . judicial determination[is] not included as required in the court orders identified in paragraph[] (b) . . . of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that [this] required determination[has] been made.

(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts . . . judicial determinations.

(3) Court orders that reference State law to substantiate judicial determinations are not acceptable, even if State law provides that a removal must be based on a judicial determination . . . that removal can only be ordered after reasonable efforts have been made.”

Court rule requirements. The applicable court rule, MCR 3.965(D), mirrors the requirements in the federal regulations quoted above. That court rule sets forth the following requirements for this finding:

“(D) *Pretrial Placement; Reasonable Efforts Determination.* In making the reasonable efforts determination under this subrule, the child’s health and safety must be of paramount concern to the court.

“(1) When the court has placed a child with someone other than the custodial parent, guardian, or legal custodian, the court must determine whether the agency has made reasonable efforts to prevent the removal of the child. The court must make this determination no later than 60 days from the date of removal, and must state the factual basis for the determination in the court order. Nunc pro tunc orders or affidavits are not acceptable.

“(2) Reasonable efforts to prevent a child’s removal from the home are not required if a court of competent jurisdiction has determined that

*See Section
18.28.

(a) the parent has subjected the child to aggravated circumstances as listed in MCL 712A.19b(3)(k);* or

(b) the parent has been convicted of:

(i) murder of another child of the parent,

(ii) voluntary manslaughter of another child of the parent,

(iii) aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter, or

(iv) a felony assault that results in serious bodily injury to the child or another child of the parent; or

(c) parental rights of the parent with respect to a sibling have been terminated involuntarily.”

See DHS *Services Manual*, CFP 714-2 and CFF 722-6, for a description of services that may be offered to families to prevent a child’s removal from home.

8.11 Review of Placement and Initial Service Plan

A. On Motion of a Party

On motion of a party, the court must review the custody order, placement order, or Initial Service Plan and may modify the orders or plan if it is in the child’s best interest. MCL 712A.13a(12). MCR 3.966(A) states as follows:

“(A) *Review of Placement Order and Initial Service Plan.* On motion of a party, the court must review the custody order, placement order, or the initial service plan, and may modify those orders and plan if it is in the best interest of the child and, if removal from the parent, guardian, or legal custodian is requested, determine whether the conditions in MCR 3.965(C)(2) exist.”*

*See Section
8.1(B), above.

“Party” means the petitioner, child, respondent, and parent, guardian, or legal custodian. MCR 3.903(A)(18)(b).

B. Following Notification of Supervising Agency's Placement Decision

Not more than 90 days after the child's removal, the supervising agency must make a placement decision and document the reasons for the decision in writing, and give written notice of the placement decision and supporting reasons to the following persons:

- the child's attorney;
- the child's guardian;
- the child's guardian ad litem;
- the child's mother;
- the child's father;
- the attorneys for the mother and father;
- each relative who expresses an interest in caring for the child;
- the child if he or she is old enough to express an opinion regarding placement; and
- the prosecuting attorney.

MCL 722.954a(2)(a)–(b).

MCR 3.966(B) sets forth the requirements following initial notice of the supervising agency's placement decision:

“(B) Petitions to Review Placement Decisions by Supervising Agency.

“(1) *General.* The court may review placement decisions when all of the following apply:

- (a) a child has been removed from the home;
- (b) the supervising agency has made a placement decision after identifying, locating, and consulting with relatives to determine placement with a fit and appropriate relative who would meet the child's developmental, emotional, and physical needs as an alternative to nonrelative foster care;
- (c) the supervising agency has provided written notice of the placement decision;

(d) a person receiving notice has disagreed with the placement decision and has given the child's lawyer-guardian ad litem written notice of the disagreement within 5 days of the date on which the person receives notice; and

(e) the child's lawyer-guardian ad litem determines the decision is not in the child's best interest.

“(2) *Petition for Review*. If the criteria in subrule (1) are met, within 14 days after the date of the agency's written placement decision, the child's lawyer-guardian ad litem must file a petition for review.

“(3) *Hearing on Petition*. The court must commence a review hearing on the record within 7 days of the filing of the petition.”

See also MCL 722.954a(3), which contains similar requirements.

8.12 Restrictions on Changes of a Child's Foster Care Placement

In *Mayberry v Pryor*, 422 Mich 579, 586–87 (1985), the Michigan Supreme Court described the purpose of foster care placements:

“[T]he goal of foster care is not to create a new ‘family’ unit or encourage permanent emotional ties between the child and foster parents. Foster care is designed to provide a stable, nurturing, noninstitutionalized environment for the child while the natural parent or caretaker attempts to remedy the problems which precipitated the child's removal or, if parental rights have been terminated, until suitable adoptive parents are found.” (Citations omitted.)

Foster parents are not parties to a child protective proceeding, but they do have a right to seek review of a supervising agency's decision to remove a foster child from their home as described in Sections 8.12–8.16.* MCL 712A.13b(1) states as follows:

“(1) If a child under the court's jurisdiction under section 2(b) of this chapter, or under MCI jurisdiction, control, or supervision, is placed in foster care, the agency shall not change the child's placement except under 1 of the following circumstances:

*For discussion of substantive and procedural due process issues surrounding this procedure, see *Smith v Org of Foster Families*, 431 US 816 (1977).

*See Section 8.2, above, for discussion of relative placements.

(a) The person providing the foster care requests or agrees to the change.

(b) Even though the person providing the foster care objects to a proposed change in placement, 1 of the following applies:

(i) The court orders the child returned home.

(ii) The change in placement is less than 30 days after the child's initial removal from his or her home.

(iii) The change in placement is less than 90 days after the child's initial removal from his or her home, and the new placement is with a relative.*

(iv) The change in placement is in accordance with other provisions of this section.”

8.13 Required Notices Prior to Changes of a Child's Foster Care Placement

*See Section 8.16, below.

Unless there is reasonable cause to believe that the child has suffered sexual abuse or nonaccidental physical injury, or that there is substantial risk of harm to the child's emotional well-being,* the agency responsible for the child's care and supervision must comply with certain requirements before changing the child's foster care placement.

Before the change in placement takes effect, the agency must:

- notify the State Court Administrative Office of the proposed change;
- notify the foster parents of the proposed change and that if they disagree with the proposed change, they may appeal within three business days to a Foster Care Review Board; and
- maintain the current placement for not less than the three days, and if the foster parents do appeal, then maintain the placement until the Foster Care Review Board makes its determination.

MCL 712A.13b(2)(a)–(c).

8.14 Required Procedures for Appeals of Changes of Foster Care Placements

A. Investigation by Foster Care Review Board

Within seven days of receiving an appeal from foster parents, the Foster Care Review Board must investigate the change or proposed change in placement. Within three days after completion of the investigation, the FCRB must report its findings and recommendations to the court or the MCI Superintendent (if the child is under the jurisdiction, supervision, or control of the MCI), foster care parents, parents, and the agency. MCL 712A.13b(3).

A foster parent may appeal orally but must submit a written appeal immediately thereafter. MCL 712A.13b(2)(b).

B. Change in Child's Placement Pending Appeal to Family Division

If, after investigation, the Foster Care Review Board determines that the move is in the child's best interests, the agency may move the child. MCL 712A.13b(4). However, if the FCRB determines that the change in placement is not in the child's best interests, the agency must maintain the child's current placement until a finding and order by the court or, if the child is under MCI jurisdiction, control, or supervision, a decision by the MCI Superintendent. MCL 712A.13b(5). The FCRB must then notify the court or MCI Superintendent of the disagreement. *Id.*

8.15 Appeals to Family Division or MCI Superintendent of Changes of Foster Care Placements

MCR 3.966(C) sets forth the required procedures for appeals of a decision of a Foster Care Review Board regarding a child's placement. That rule states:

“(C) Disputes Between Agency and Foster Care Review Board Regarding Change In Placement.

“(1) *General.* The court must conduct a hearing upon notice from the Foster Care Review Board that, after an investigation, it disagrees with a proposed change in placement by the agency of a child who is not a permanent ward of the Michigan Children's Institute.

“(2) Procedure.

(a) *Time.* The court must set the hearing no sooner than 7 days and no later than 14 days after receipt of the notice from the Foster Care Review Board that there is a disagreement regarding a placement change.

(b) *Notice.* The court must provide notice of the hearing date to the foster parents, each interested party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.

(c) *Evidence.* The court may hear testimony from the agency and any other interested party. The court may consider any other evidence bearing upon the proposed change in placement. The Rules of Evidence do not apply to a hearing under this rule.

“(d) *Findings.* The court must order the continuation or restoration of placement unless the court finds that the proposed change in placement is in the child’s best interests.”

See also MCL 712A.13b(5)–(6), which contain substantially similar requirements.

If the child is subject to MCI jurisdiction, control, or supervision, the MCI Superintendent must “make a decision regarding the child’s placement” within 14 days after notice from the FCRB. MCL 712A.13b(5). The MCI Superintendent must then inform each interested party of that decision. *Id.*

8.16 Emergency Change in a Child’s Foster Care Placement

If the agency responsible for the child’s care and supervision has reasonable cause to believe that the child has suffered sexual abuse or nonaccidental physical injury while in a foster care placement, or that there is substantial risk of harm to the child’s emotional well-being in the foster care placement,* the following rules apply:

- The agency may change the child’s foster care placement without adhering to the time requirements in MCL 712A.13b(1), or the notice requirements in MCL 712A.13b(2)(b) and (c).* The agency must only notify the State Court Administrative Office as required by MCL 712A.13b(2)(a).
- As in other cases, the foster parent may appeal the change in placement to the FCRB within three days after the child’s removal. Although the foster parent may appeal orally, a written appeal must be filed immediately thereafter. MCL 712A.13b(7).

*See Sections 2.1(C) and 2.7 for investigation and referral requirements.

*See Sections 8.12–8.13, above, for these time and notice requirements.

- The child may not be returned to the foster care placement without a court order or the MCI Superintendent's approval. MCL 712A.13b(5). The court must order the continuation or restoration of the placement unless the court finds that the proposed change in placement is in the child's best interests. MCL 712A.13b(6).

Practice Note: Foster Care Review Board

Citizen Review

The Foster Care Review Board Program is a system of third party review, which was established by the Michigan State Legislature in an effort to improve children's foster care programs throughout the state. The Program is administered by the State Court Administrative Office of the Michigan Supreme Court and consists of citizen volunteers who are recruited, screened, and trained by program staff.

The idea for third party citizen review resulted from the perception that abused/neglected children entering the child welfare system "drifted" in a temporary state without a permanent plan and accompanying action steps. Although the Family Division of Circuit Court, Department of Human Services (DHS), and private child placement agencies all play major roles in addressing children in care, it is difficult for any one of them to provide an objective assessment of the foster care system. Local citizen review boards are in a unique position to look at the activities of these primary players in the foster care system.

Legal Basis

There is a basis for third party citizen review in Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980, and 105-89, the Adoption and Safe Families Act of 1997. These federal laws provide standards for child welfare in the states as conditions to receive federal funding. Each child in foster care must have a semiannual administrative review which can be conducted by the court or another body. This review must be open to the participation of the parents of the child and conducted by a panel of appropriate persons. At least one of the panel members must be responsible for the case management of, or delivery of services to, either the child or the parents who are the subject of the review.

In Michigan, 1984 Public Act 422, as amended by 1986 Public Act 159, 1989 Public Act 74, and 1997 Public Act 170, provide the basis for the Foster Care Review Board Program.*

*See MCL
722.131 et seq.

Board Operation

What are foster care review boards and how do they operate? Local review boards consist of five volunteer citizens who have been recruited, screened, and trained by the State Court Administrative Office. The volunteers meet one day per month in their respective communities to review the cases of four to six sib-

ling groups of children who are in foster care because of abuse or neglect.

A random sample of cases is selected for review from an DHS master list which is provided to the Foster Care Review Board Program offices. The FCRBP offices then request specific cases from local county DHS offices, copy the materials, and mail them to each board member prior to the review.

Each case review is conducted in three stages. The first stage involves the board volunteer reading the written materials prior to the hearing which detail the reason(s) for out-of-home placement, and the agency's plan for services to the child and family. The second stage is an in-person interview with persons defined as interested parties in the case. Interested parties include caseworkers, biological parents, foster parents, and, if appropriate, the child(ren). Additionally, therapists, attorneys, grandparents, and others often attend reviews.

During the third stage of the review process, the board compiles findings of fact and makes advisory recommendations regarding each case reviewed. These findings and advisory recommendations are provided to the Family Division of Circuit Court, DHS, private agencies, prosecuting attorney, and interested parties. The court may use the findings at its discretion. Final decision-making authority with regard to the care of a child in foster care always rests with the Family Division of Circuit Court.

Once selected for review, cases continue to be reviewed every six months until a permanent plan is achieved.

With the passage of 1997 P.A.'s 163 and 170, foster care review boards were given the added responsibility of reviewing foster parent appeals when foster parents are not in agreement with the movement of wards from their homes.

Volunteer Board Members

What is unique about Foster Care Review Board volunteers? They are the backbone of the Program. There are thousands of people involved in the child welfare system – children, parents, foster parents, social workers, psychologists, nurses, doctors, teachers, law enforcement officers, attorneys, therapists, counselors, and judges. Except for children and parents, each of these groups has an official role to fulfill in addressing children and families caught up in the foster care system. Each has a vested interest. Volunteers who serve on boards are different. Volunteers have neither an official role nor a vested interest. Yet, they are authorized a unique look at the foster care system through their role in the Foster Care Review Board Program.

Significance of Boards

How can local board reviews affect the greater child welfare system? Within the Foster Care Review Board Program there is a statewide Advisory Committee. The Advisory Committee is composed of representatives of local boards and others in the child welfare community who are appointed by the State Court

Administrator. Data collected from local board reviews is used by the Advisory Committee to advocate for children at the county, state, and federal levels. Advocacy can be with the Family Division of Circuit Court, DHS, legislature, elected officials, or other community groups.

Most people would agree that children in care have the right to quality reviews of their circumstances. Although courts and social service agencies bear the burden of determining and carrying out plans for foster children, in settings often closed to public scrutiny, citizen reviewers are in a unique position to not only review the progress of children in the system, but speak out knowledgeably. Through their review of case materials and interviews with parents, foster parents, caseworkers, attorneys, and children, they acquire a unique perspective of the problems and barriers which hinder permanent placement for children. By pooling their knowledge of foster care, they provide a springboard to advocacy for children – locally, statewide, and nationally.

Summary

Citizen involvement in foster care review is beneficial in several ways. First, citizen reviews develop an awareness of the foster care system and consequently can help educate the community. Second, over time, citizen reviewers become a constituency for children and advocate for their needs with the agency, court, their own families, the legislature, and the community. Third, citizen reviewers bring a quality control aspect to the foster care system. Finally, citizen participation in case reviews opens the system to the community, thus broadening the base of accountability for public services for children.

Citizen review assists the courts, DHS, and others to facilitate permanent placements for foster children in a progressive, timely manner.

8.17 Placement of a Child Pursuant to the Safe Delivery of Newborns Law

Duties of the child placing agency. Pursuant to MCL 712.7, once a child placing agency receives notice from a hospital, as required by MCL 712.5,* the child placing agency must do all of the following:

“(a) Immediately assume the care, control, and temporary protective custody of the newborn.

“(b) If a parent is known and willing, immediately meet with the parent.

*See Section 3.8.

*MCL 712.1(2)(l) defines “Preplacement assessment” as “an assessment of a prospective adoptive parent as described in [MCL 710.23f].” See Warner, *Adoption Proceedings Benchbook* (MJI, 2003), Section 5.2, for information on preplacement assessments.

“(c) Make a temporary placement of the newborn with a prospective adoptive parent who has an approved preplacement assessment* and resides within the state.

“(d) Immediately request assistance from law enforcement officials to investigate and determine, through the missing children information clearinghouse, the national center for missing and exploited children, and any other national and state resources, whether the newborn is a missing child.

“(e) Not later than 48 hours after a transfer of physical custody to a prospective adoptive parent, petition the court in the county in which the prospective adoptive parent resides to provide authority to place the newborn and provide care for the newborn. The petition shall include all of the following:

- (i) The date of the transfer of physical custody.
- (ii) The name and address of the emergency service provider to whom the newborn was surrendered.
- (iii) Any information, either written or verbal, that was provided by and to the parent who surrendered the newborn. The emergency service provider that originally accepted the newborn as required by [MCL 712.3] shall provide this information to the child placing agency.

“(f) Within 28 days, make reasonable efforts to identify and locate a parent who did not surrender the newborn. If the identity and address of that parent are unknown, the child placing agency shall provide notice by publication in a newspaper of general circulation in the county where the newborn was surrendered.”

Parental request for custody. A biological parent of a newborn may request custody of the newborn after the newborn has been surrendered to an emergency service provider. MCL 712.10 requires a biological parent to file a petition for custody within 28 days after the newborn was surrendered. MCL 712.10(1)(a)–(c) provide that the biological parent may file the petition in one of the following counties:

“(a) If the parent has located the newborn, the county where the newborn is located.

“(b) If subdivision (a) does not apply and the parent knows the location of the emergency service provider to

whom the newborn was surrendered, the county where the emergency service provider is located.

“(c) If neither subdivision (a) nor (b) apply, the county where the parent is located.”

Before the court holds a custody hearing on the petition of a parent for custody of a surrendered newborn, the court must determine whether the individual filing the custody action is the newborn’s biological parent. MCL 712.10(2).

Applicability of other law. MCL 712.2(3) provides:

“Unless [the Safe Delivery of Newborns Law] specifically provides otherwise, a provision in another chapter of [the Probate Code] does not apply to a proceeding under [the Safe Delivery of Newborns Law]. Unless [the Safe Delivery of Newborns Law] specifically provides otherwise, the child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.30, does not apply to a proceeding under this chapter.”

Determination of maternity and paternity. MCL 712.11(1) requires the court, in a custody action filed under this chapter, to order that each party claiming paternity or maternity and the child submit to DNA testing or blood or tissue typing to determine whether each party is likely to be or is not the biological parent of the child. If the court orders DNA testing and a party refuses to submit to the testing, the court may do any of the following:

“(a) Dismiss the custody action in regard to the party who refuses.

“(b) If a hearing is held, allow the disclosure of the fact of the refusal unless good cause is shown for not disclosing the fact of refusal.” MCL 712.11(1)(a)–(b).

The blood or tissue typing or DNA identification profiling must be conducted by a person accredited for paternity or maternity determinations by a nationally recognized scientific organization, including but not limited to the American Association of Blood Banks. MCL 712.11(2).

Costs of blood or tissue typing or DNA Identification Profiling. MCL 712.11(3) provides:

“The court shall fix the compensation of an expert at a reasonable amount. Except for an individual who the court determines is indigent, the court shall direct each party claiming paternity or maternity to pay the compensation for his or her own testing plus a portion of the compensation for testing the child equal to the total

amount divided by the number of parties claiming paternity and maternity. Before blood or tissue typing or DNA identification profiling is conducted, the court may order a part or all of the compensation paid in advance. Documentation of the genetic testing expenses is admissible as evidence of the amount, which evidence constitutes prima facie evidence of the amount of those expenses without third party foundation testimony.”

Results of blood or tissue typing or DNA Identification Profiling. The results of blood or tissue typing or DNA identification profiling made pursuant to the Safe Delivery of Newborns Law must be served on the party tested. The results must also be filed with the court. MCL 712.12(1). If an objection is not filed, the court shall admit in proceedings under the Safe Delivery of Newborns Law the result of the blood or tissue typing or the DNA identification profile and the summary report without requiring foundation testimony or other proof of authenticity or accuracy. MCL 712.12(1).

Objections to the results of blood or tissue typing or DNA Identification Profiling. A written objection to the DNA identification profile or summary report must be filed within 14 days of service on the party or the objection is waived. The objection must set forth the specific basis for the objection. MCL 712.12(1). The court must not schedule a hearing on the issue of paternity or maternity until after the expiration of the 14-day period.

MCL 712.12(1) also provides:

“ . . . If an objection is filed within the 14-day period and on the motion of a party, the court shall hold a hearing to determine the admissibility of the DNA identification profile or summary report. The objecting party has the burden of proving by clear and convincing evidence by a qualified person described in [MCL 712.11*] that foundation testimony or other proof of authenticity or accuracy is necessary for admission of the DNA identification profile or summary report.”

Admissibility of the results of blood or tissue typing or DNA Identification Profiling. MCL 712.12(2) provides:

“If the probability of paternity or maternity determined by the qualified person described in [MCL 712.11] conducting the blood or tissue typing or DNA identification profiling is 99% or higher, and the DNA identification profile and summary report are admissible as provided in subsection (1), paternity or maternity is presumed. If the results of the analysis of genetic testing material from 2 or more persons indicate a probability of

*A qualified person is a person accredited for paternity or maternity determinations by a nationally recognized scientific organization, including but not limited to the American Association of Blood Banks. MCL 712.11(2).

paternity or maternity greater than 99%, the contracting laboratory shall conduct additional genetic testing until all but 1 of the putative fathers or putative mothers is eliminated, unless the dispute involves 2 or more putative fathers or putative mothers who have identical DNA.”

Summary disposition. Once a party establishes the presumption of maternity or paternity as provided in MCL 712.12(2), that party may move for summary disposition on the issue of paternity or maternity. MCL 712.12(3).

Disclosure of information obtained through genetic testing. Information that is obtained through genetic testing pursuant to the Safe Delivery of Newborns Law must not be disclosed, except as authorized in the Safe Delivery of Newborns Law. MCL 712.13. The only authorization in the Safe Delivery of Newborns Law is contained in MCL 712.12(1), which provides that the parties tested must be served with a copy of the results and a copy must be filed with the court. A violation of MCL 712.13 is a misdemeanor punishable by a fine of not more than \$5,000.00 for the first offense. Second or subsequent offenses are punishable by imprisonment for not more than one year and/or a fine of not more than \$10,000.00. MCL 712.13(6).

Custody hearing. In a custody action filed under the Safe Delivery of Newborns Law, the court must determine custody based upon the best interests of the newborn. MCL 712.14(1) requires the court to consider, evaluate, and make findings on each factor of the newborn’s best interest with the goal of achieving permanence for the newborn at the earliest possible date.

MCL 712.14(2) provides:

“(2) A newborn’s best interest in a custody action under this chapter is all of the following factors regarding a parent claiming parenthood of the newborn:

“(a) The love, affection, and other emotional ties existing between the newborn and the parent.

“(b) The parent’s capacity to give the newborn love, affection, and guidance.

“(c) The parent’s capacity and disposition to provide the newborn with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

“(d) The permanence, as a family unit, of the existing or proposed custodial home.

“(e) The parent’s moral fitness.

“(f) The parent’s mental and physical health.

“(g) Whether the parent has a history of domestic violence.

“(h) If the parent is not the parent who surrendered the newborn, the opportunity the parent had to provide appropriate care and custody of the newborn before the newborn’s birth or surrender.

“(i) Any other factor considered by the court to be relevant to the determination of the newborn’s best interest.”

For the purposes of factor (g), whether the parent has a history of domestic violence, the Safe Delivery of Newborns Law refers to the definition of domestic violence provided in the Prevention and Treatment of Domestic Violence Act, MCL 400.1501 et seq. MCL 712.1(2)(d). The Prevention and Treatment of Domestic Violence Act provides:

“Domestic violence” means ‘the occurrence of any of the following acts by a person that is not an act of self-defense:

“(i) Causing or attempting to cause physical or mental harm to a family or household member.

“(ii) Placing a family or household member in fear of physical or mental harm.

“(iii) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

“(iv) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.” MCL 400.1501(d).

Based upon the court’s findings of the newborn’s best interests, the court may issue an order that does one of the following:

“(a) Grants legal or physical custody, or both, of the newborn to the parent, and either retains or relinquishes jurisdiction.

“(b) Terminates the parent’s parental rights and gives a child placing agency custody and care of the newborn.”
MCL 712.15.

No parental request for custody. A parent who surrenders a newborn and does not file a petition for custody under MCL 712.10 is presumed to have knowingly released his or her parental rights to the newborn. MCL 712.17(1).

If a petition for custody is not filed under MCL 712.10, then the child placing agency shall petition the court for termination of parental rights under MCL 712A.19b.* If the agency has complied with MCL 712.7(f), then the notice under that section is the notice to the newborn’s parents required by MCL 712A.19b. MCL 712.7(f) requires the agency to make reasonable efforts to identify and locate a parent who did not surrender the newborn, and if the identity or address of the parent is unknown, the agency must publish notice in a newspaper in the county where the newborn was surrendered.

*See Section
18.18.

